Principles and Rules of Jihad: A juristic Approach

• *Dr. Rashid Ahmad*

Abstract:
Jihad is a sacred term and a sacred endeavor as well, but unfortunately it has been misunderstood and misused in many cases, therefore its elaboration and explanation is needed from various aspects . This article deals with the principles and rules of Jihad. At the beginning, the concept of jihad has been expounded, then motivations of war of the period of ignorance have been discussed. Those motivations have been brought in to focus which Islam has recognized. For instance defending of religion and faith, safeguarding the territory of Muslims, eradication of persecution, eradication of Internal enemies, support for the oppressed Muslims etc. The purpose of jihad has also been discussed, while principles and rules of jihad make the next part of the article. In this regard views of a well-known medieval Hanafi jurist Imam Hasan al- Shaybani with the commentary of contemporary scholars have been produced.

Islam is a religion of peace, it is evident from its very root SLM, one meaning of which is to surrender, to submit while it's another meaning is, to reconcile with one another and to make peace[1]. In Islam there are several commands of Allah which are obligatory and jihad is one of them and it carries an important position as it has been made obligatory for the purpose of defense and protection of Islam and the Islamic state.

Islam has laid down great emphasis on sanctity of life and honor. There are many verses in the Qur'an and Traditions of the Prophet (PBUH) which prohibit unlawful killing.

The Qur'an narrates the story of the two sons of Adam, one of whom killed the other. The Qur'an criticized the murderer in the following words:

" On that account: We ordained for the Children of Israel that if any one slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people. Then although there came to them Our

• *Associate Professor Shaykh Zayed Islamic Center,University of Peshawar.*

apostles with clear signs, yet, even after that, many of them continued to commit excesses in the land." [2]

On another place the Quran says:

" Say: "Come, I will rehearse what Allah hath (really) prohibited you from": Join not anything as equal to Him; be good to your parents; kill not your children on plea of want;- We provide sustenance for you and for them;- come not nigh to shameful deeds. Whether open or secret; take not life, which Allah hath made sacred, except by way of justice and law: thus doth He commands you, that ye may learn wisdom." [3]

And:

"Those who invoke not, with Allah, any other god, nor slay such life as Allah has made sacred except for just cause, nor commit forcination; - and any that does this (not only) meets punishment. [4]*"*

The Prophet (PBUH) said during his last pilgrimage:

"Indeed your blood and your property are inviolable, like the inviolability of this day of yours and this month of yours and this land of yours, until the day you meet your lord. Listen, have I conveyed the message? The companions replied, 'Yes.' He (PBUH), said" O Allah! Bear witness. Let the one present inform those who are absent, for perhaps the one to whom it is conveyed will retain it better than he who hears it. Do not revert as disbelievers after me, striking each other's necks" [5]

He also said:*"The first issue that will be judged between people on the Day of Resurrection is that of blood*[6]*".*

He also said: *" Among the deadly sins polytheism is the deadliest one, and killing a human being, and disobedience of parents, and telling lies.* [7]*"*

The word Jihad has been derived from *(Juhd*) which means to make utmost effort to achieve an objective[8].

While literally it means" an ongoing struggle and a continuing endeavor. ………. Etymologically, the scale of the term jihad includes terms like qital (fighting), nizal(duel), nisab(fixed standard),etc. There are two similar terms that are relevant to the concept of jihad and have the same root: one is *mujahada*, which means a mutual struggle, and the other is the derivative, *ijtihad*, which means concentrated struggle. If a struggle is academic, it is *ijtihad*, if it is spiritual, it is *mujahada*; and if it is physical, it is *jihad*" [9]

This is the religion of Islam who introduced the word *jihad* ,otherwise, there was no concept of *jihad* during the period of ignorance (*Jahilliyah*) They were using the word *harb* (war) for armed struggle. [10] The motives of war at that time were:

- **Appetite for booty:**

  Taking arms to take wealth, women and slave was a common practice. Collecting of money through loot and plunder was considered the honorable way of living.

- **Pride:**

  Another attraction in war for them was wining of fame to establish their prestige of valor, nobility, and courage.

- **Revenge:**

  Another motive was their passion for revenge as according to their belief the soul of a murdered person remains restless until his revenge is taken.

  However, the Prophet (PBUH) negated all these motives. He said on one occasion**:**

"He who went to fight in the way of Allah. But had the intention of benefiting himself with a rope to fasten his camel, will get the string but no reward in Hereafter".[11]

The following motivations have been recognized by Islam as valid:

- **Defending one's faith**:

When Muslims are ill-treated and expelled from their homeland just for nothing except that they are Muslims then they are allowed to take arms for the sake of their religion.

The Quran says:

"*Permission*(to fight) *has been granted to those who are being fought against for they have been wronged. Verily Allah has the power to help* them .*Those who were unjustly expelled from their homes for no other reason than their saying: " Allah is our Lord."* [12]

- **Defending and safeguarding the territory of Muslims:**

  Islamic history shows that whenever Muslim territory was attacked they defended it by all means. During the life time of the Prophet (PBUH), when *Madinah* was attacked, the Muslims defended it and fought with their enemies.

- **Eradication of persecution:**

  It is the unanimous opinion of the jurists that when war is waged against Muslims and they are subjected to oppression and atrocities they are justified to defend themselves. The holy Quran says:

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- **Eradication of Internal enemies:**

Islam permits to wage war against the internal enemies of the state. The Holy Quran says:

“If the hypocrites and those whose hearts are diseased and the scandal –mongers in Madinah do not desist We shall certainly rouse you to take action against them. Then they will be hardly able to live this city as your neighbor. They will be cursed from every side and will be seized wherever they are found and killed disgracefully”.[14]

Support for the oppressed Muslims:

If anywhere Muslims are victimized for their faith and religion, then it will be the responsibility of Muslim State to emancipate them from such persecution.

The Quran says:

*And why should ye not fight in the cause of Allah and of those who, being weak, are ill-treated (*and oppressed*)?- Men, women, and children, whose cry is: "Our Lord! Rescue us from this town, whose people are oppressors; and raise for us from thee one who will protect; and raise for us from thee one who will help!"*[15]

Purposes of Jihad:

Dr. Mahmood Ahmad Ghazi throws light on purposes of jihad :

“It has been a unanimous view of the Muslim jurists that the primary objective of jihad is to remove hindrances in the way of disseminating the message of Islam and to weaken the forces that come in its way. Thus, the ultimate purpose of jihad is moral, spiritual and ideological and not political or military. Therefore, it has always been considered necessary to invite the opponent to accept Islam before starting any warlike operation. This invitation, on the one hand, reminds the Muslim warriors that their purpose is not to gain material benefits and, on the other, gives an opportunity to the opponent to end hostilities at once and to enter the fraternity of Islam” [16]

He also says:

“The purpose of jihad is not to convert people to Islam, as is more than evident from the Qur’anic verse: ‘There is no compulsion in religion’[17]. Jihad is, rather, meant to bring about a holistic, harmonious and integrated transformation of human individuals and society. This total and all-round transformation of

individuals and society is the ultimate objective, which cannot be achieved within a short period of time. It cannot be achieved in a day or two, or even in a decade or two. It is an ongoing and life-lang mission of each and every Muslim. That is why whenever the Qur'an refers to *jihad*, it does not refer to armies, rulers or governments. It refers to individuals."[18]

Moreover, the purpose of jihad is to protect places of worship whether muslims and non-muslims. Dr. Anis Ahmad elaborates this point in the following words:

"Elsewhere the Qur'an talks specifically about followers of at least three different faiths whose places of worship have to be protected by the Muslims as an obligation and in order to uphold cultural and religious and human rights. "***.*** *For had it not been for Allah to check one set of people by means of another, there would surely have been pulled down monasteries (*temples*), Churches, Synagogues, and Mosques, in which the name of Allah is commemorated in abundant measure. Allah will certainly aid those who help His Cause, for verily Allah is full of strength, exalted in might*",.[19,20] "

He further says:

"Jihad consequently in the Qur'an, stands for a movement of protection of human rights, freedom, and dignity of man. It does not call for a "holy war" against the "infidels". The term "holy war", which in Arabic would mean *harb al-muqaddas*, practically does not exist in the vocabulary of the Qur'an and Sunnah. Similarly peace (amn, salam, sulh) in Islamic tradition is not an antonym of war. It stands for a culture of peace, tolerance, mutual understanding and an ongoing systematic culture and civilizational discourse and dialogue."[21]

Difference between violence and Jihad:

Dr. Anis Ahmad differentiates between violence and jihad in the following words:

"Violence is generally defined as purposeful use of force in order to hurt, insult, intimidate or injure someone. This is why a remote control device when used to hurt or kill anyone is regarded as an act of violence and terror. However, we always differentiate between physical injury with an intention to cause pain or harm and the same action with an intention to improve, repair and make life better for a person, such as the use of surgical tools by a dentist in extracting tooth or the use of knife by a surgeon to save a patient's life. It is in this context that jihad, in the Qur'an, is projected as an instrument for realization of peace and justice in society, and at the same time a tool for checking and eliminating lawlessness, oppression and exploitation."[22]

Waging Jihad:

The issue of waging jihad is of great importance, as without its proper understanding many misconceptions have been raised on the true spirit of Jihad. Dr.Ghazi addresses this issue in the following words.

"The second basic principle of the Islamic law of war is that no use of force is allowed without the permission of a legitimate political authority. If the legitimate muslim governments does not exist, no hostility or warlike operation can be initiated against any adjoining or neighboring enemy. Imam Abu Yusuf, a well-known Hanafi jurist and one of the founders of the Hanafi school, laid down this principle expressing it in the dictum لا تسرى سرية بغير اذن الامام meaning 'No expedition can be dispatched without the permission of the government.' [23] Other jurists also consider jihad as the function of the state: whenever it finds it expedient, the state will decide to undertake jihad. In a nutshell, the question of jihad cannot be decided by individuals." [24]

Responsibilities of Mujahedeen:

In fact Jihad is not the name of indiscriminate killing. Armed struggle is one of the last step of Jihad. Islam has clearly enunciated to seek first of all, peaceful solution of conflict. However, in case of any aggression Islam allows to defend the faith by all means including taking of arms but with clear instructions about the use of force.

Imam Hasan al- Shaybani quoted the following instructions of the Prophet (PBUH) in his famous book al-Siyar al-Saghir as follows:

"Whenever the Messenger of Allah, peace be on him, sent an army or a group of troops he used to admonish its leaders to fear Allah in his personal behavior and to be pleasant to the Muslims who accompanied him" Then he would say: " fight in the name of Allah and in the way of Allah; fight only those who disbelieve in Allah. Do not misappropriate; do not commit treachery; do not mutilate (the dead); and do not kill a child. When you meet the polytheists who are your enemy invite them to Islam. If they accept Islam, accept it from them and hold yourselves back from them. Then, invite them to move over from their territory to the territory of *Muhajirin*. If they do that, accept it from them and hold yourselves back from them. [25] In case they do not, tell them that they are like other non-resident Muslims: they shall be subject to the injunctions of Allah applicable to other Muslims; however, they shall have no share in fay[26]of the state or in the spoils of war. If they refuse to accept Islam, invite them to pay jizyah[27] If they do that, accept it from them, and hold yourselves back from them. When you lay siege to the people of a fort or a city and they ask you to allow them to surrender, subject to the commandment of Allah, do not (commit yourselves to) do that, because you might not know what is the commandment of Allah regarding them. Rather, bring them to the acceptance of your own decision, and then decide about them according to your own opinion. When you

lay siege to the people of a fort or a city and they ask you to grant them the guarantee of Allah and guarantee of His Messenger, do not give the guarantee of Allah or the guarantee of His Messenger; rather grant them your own guarantee and the guarantee of your forefathers for it is less grave if you fail to fulfill your guarantee and your forefathers, guarantee." [28]

In this regard instructions of the first Caliph Hazrat Abu Bakr are of immense importance. He gave these instructions to Yazid b Abi Sufyan when he was marching towards Syria. He asked him I give you ten instructions, keep them in mind and act upon them accordingly.

"1: You will meet some people who have devoted themselves to their places of worship, so let them for what they have devoted their selves to.

2: Do not kill children, women and the aged.

However if an old and aged person is involved in direct combat by means of his advice and guidance etc., then he will be considered as belligerent. It is evident from the narration of the Prophet(PBUH) who ordered the killing of Duraid bn al- Ssama as he was a veteran of war and was advising his army in a battle against the Muslims. [29]

3: Do not cut fruit bearing trees nor set them ablaze.

4: Do not kill animal without need for food.

5: Do not ruin towns.

6: No breach of trust in booty.

7: Do not turn your back in war.

8: Fulfill commitments.

9: Do not mutilate dead bodies

10: Those who confess loyalty, their life and property are as sacred as those of Muslims. [30]

As far as medical personals are concerned, in this regard , jurists are of the opinion , that all Paramedics and similar other persons are not considered a part of the combatants, even if they are supporting combatants and providing support to the belligerent[31]. This privilege is extended not only to the medical corps but also to other supporting staff, including nurses, servants, cooks, suppliers of civil provisions, very old soldiers and old persons who do not participate in the war[32].

Conclusion:

The term Jihad includes all kinds of struggles for the cause of supremacy of Islam. It may be carried out by means of verbal instructions, communication, preaching and discourse etc. and may be carried out by using intellectual powers

in the shape of writings and using print and electronic media. However, one of its form is armed struggle, keeping in view that it is the last option to be resorted. If such like situation takes place then Islam has clearly differentiated between the combatants and non-combatants. It has preserved the rights of both of them and clear injunctions have been given that the use of force should be restricted to the belligerents only.

Notes and References

1- Ahmad, Khurshid. (1997). Islam, its Meaning and Message (p. 39). Lahore, Punjab: A.H. Publisher

2- al-Qur'an: 5:32

3- al-Qur'an: 6:151

4- al-Qur'an: 25:68

5- al-Bukhari, Muhammad bn Ismai'l. (1987). al- Jami' al-Sahih, Kitab al-Ilm In (Vol. 1, p. 37). Beirut: Dar Ibn Kathir.

6- al-Bukhari, Muhammad bn Ismai'l. (1987). al- Jami' al-Sahih, Kitab al-Diyat In (Vol. 6:2517).

7- al-Bukhari, Muhammad bn Ismai'l. (1987). al-Jami 'a al-Sahih, Kitab, Al-Diyat, Bab wa man ihyahah. (Vol. 6, p. 2519).

8- al-Afriqi, Jamal al-Din Muhammad bn Mukrim. (n.d.). Lisan al-Arab (Vol. 3, p. 133). Beirut: Dar al-Sadir.

9- Ghazi, Mahmood, Ahmad,2011,Islam International Law and The World Today, Islamabad, Institute of Policy Studies: 154-155

10- Azad Abul Kalam Maulana, A. (1994). Islam ka Nazriah e Jang (p. 78). Lahore, Punjab: Makki Dar al Kutub.

11- al-Nasa'i, Ahmad b. Shu'ayb (1988) *al Sunan al- Kubra*, Beirut: al-Maktab al-Islami), : 2:658

12- al-Qur'an: 22:39-40

13- al-Qur'an: 22:39-40

14- al-Qur'an: 33: 60-61

15- al-Qur'an: 4:75

For further details: Maududi, Abu al- A'ala (2009). Al-Jihad fi al-Islam (21st ed., p. 77). Lahore, Punjab: Idarah Tarjuman al-Quran.

16- Al-Shaybani, Muhammad bn al-Hasan., & Ghazi, Mahmmod Ahmad (Translator). (1998).

Kitab al-Siyar al-Saghir (p. 91). Islamabad: Islamic Research Institute, International Islamic University.

17- al-Quran 2:256

18- Ghazi, Mahmood Ahmad: 155-56

19- al-Quran 22:40

20- Ahmad, Anis. (2009). Global Peace and Justice: The Islamic Perspective. In Essays on Muslims and the Challenges of Globalization (p. 165). Islamabad: Institute of Policy Studies.

21- Ibid

22- Ibid

23- Ibn Abi Shayba, Abd al –Allah bn Muhammad, 1409 AH, Fi al Sariyyah Takhruju Beghair al –Imam, in Al –Msannaf (Vol. 6, p. 495) Al-Riyadh: Maktaba Al-Rushd.

24- Ghazi: 168

25- This condition was relaxed after the conquest of Makkah, as in the beginning the Prophet (PBUH) required of every believer to migrate to Mdainah where the nascent Muslim community was in need of great manpower to protect itself from the onslaught of the surrounding hostile tribes. See for details, al Siyar al-Saghir translated by Ghazi, Mahmood Ahmad : 87)

26- Fay: It means proceeds of the state from the enemy property other than war booty See for details, al Siyar al-Saghir translated by Ghazi, Mahmood Ahmad : 87)

27- Jizya: It is a protection tax paid by the non-Muslim citizens to the Islamic state in consideration of the protection provided to them by the state in lieu of conscription. See for details, al Siyar al-Saghir translated by Ghazi, Mahmood Ahmad : 87)

28- al-Shaybani, Muhammad bn al-Hasan., & Ghazi, Mahmmod Ahmad (Translator). (1998). Kitab al-Siyar al-Saghir (p. 43).

29- al-Shaybani, M. (1997). Wasaya al- Umara. In Kitab al-Siyar al-Kabeer (Vol. 1, pp. 32). Beirut: Dar al-Kutub al-Ilmiyah.

30- al-Shaybani, M. (1997). Wasaya al- Umara. In Kitab al-Siyar al-Kabeer (Vol. 1, pp. 32-33).

- Ibn Khaldoon, Abd al-Rahman. Translation Urdu) (2004). Al-‘Aibar wa Dewan al-Mubtada wa al-Khabar fi Tarikh al-Arab w al-‘Ajam w al-Barbar(vol.2 p.443), Lahore, al-Faisal Nasheran

- Maududi, A. (2010). Islami Qwanin e Jang wa Sulh . In Al-Jihad fi al-Islam (p. 235). Lahore.

Punjab: Idarah Tarjuman al-Quran (Vol. 2, p. 443). Lahore, Punjab: Faisal Nasheran.

31- Ghazi, Mahmood Ahmad: 168

32- Hamidullah. (1973). Muslim Conduct of State (pp. 212-215). Lahore, Punjab: Sh.Muhammad Ashraf.-Ghazi Mahmood Ahmad: 168